

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NIKO LUWAN STRINGER,

Defendant-Appellant.

UNPUBLISHED

July 29, 2014

No. 315664

Wayne Circuit Court

LC No. 12-010882-FH

Before: BOONSTRA, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right from her conviction by a jury of assault with intent to do great bodily harm less than murder, MCL 750.84. The trial court sentenced her to two years' probation, with 90 days on a tether. We affirm.

Defendant first argues that the prosecution failed to present sufficient evidence to convict her, beyond a reasonable doubt, of assault with intent to do great bodily harm less than murder. We disagree.

We review de novo a claim of insufficient evidence in a criminal trial. *People v Kissner*, 292 Mich App 526, 533; 808 NW2d 522 (2011). In determining whether sufficient evidence was presented at trial to sustain a defendant's conviction, this Court must consider the "evidence in the light most favorable to the prosecutor" and determine whether a rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010).

In order to establish assault with intent to do great bodily harm less than murder, the prosecution must prove "(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder." *People v Russell*, 297 Mich App 707, 721; 825 NW2d 623 (2012) (internal citation, quotation marks, and emphasis omitted). The intent element means "intent to do serious injury of an aggravated nature." *Id.* "An actor's intent may be inferred from all the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Gonzalez*, 256 Mich App 212, 226; 663 NW2d 499 (2003), disapproved of in part on other grounds 469 Mich 967 (2003) (internal citations and quotation marks omitted). This Court has specifically held, for assault with intent to do great bodily harm, that "[i]ntent

may be inferred from a defendant's use of physical violence.” *People v Dillard*, 303 Mich App 372, ___; 845 NW2d 518, 521 (2013).

Defendant only challenges the sufficiency of the evidence regarding the intent element of the offense. The physical violence that defendant inflicted on the victim, Devonne Boyles, was sufficient to infer that defendant intended to do great bodily harm less than murder. *Dillard*, 303 Mich App at ___; 845 NW2d at 521. Indeed, the jury properly inferred defendant's intent based on Boyles's testimony regarding the incident and her subsequent injuries. Specifically, Boyles testified that she suffered a “left fracture humerus bone . . . [a] right ring finger fracture,” chest pain, a black eye, and blood in her eye. She further stated that she had lingering eyesight problems from the incident. Boyles testified that defendant punched her several times and kicked her. Wayne State University Police Investigator Chris Powell observed defendant straddling Boyles while Boyles was lying on the ground and attempting to protect her face. The prosecution presented sufficient evidence of the requisite intent.

Next, defendant argues that the trial court erred in its jury instructions. This Court reviews claims of instructional error de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002), remanded in part on other grounds 467 Mich 888 (2002). However, the trial court's determination that a jury instruction is applicable to the facts of the case is reviewed for an abuse of discretion. *People v Dobek*, 274 Mich App 58, 82; 732 NW2d 546 (2007). “The defendant bears the burden of establishing that the asserted instructional error resulted in a miscarriage of justice.” *People v Guajardo*, 300 Mich App 26, 34; 832 NW2d 409 (2013) (internal citation and quotation marks omitted).

Defendant first argues that the trial court erred by denying her a jury instruction on the lesser-included offense of misdemeanor assault under MCL 750.81. In general, a defendant is entitled to a jury instruction on a necessarily included lesser offense, and “[a] necessarily included lesser offense is an offense in which all its elements are included in the elements of the greater offense such that it would be impossible to commit the greater offense without first having committed the lesser offense.” *People v Apgar*, 264 Mich App 321, 326; 690 NW2d 312 (2004). As noted, assault with intent to do great bodily harm less than murder requires “(1) an attempt or threat with force or violence to do corporal harm to another (an assault), and (2) an intent to do great bodily harm less than murder.” *Russell*, 297 Mich App at 721 (internal citation, quotation marks, and emphasis omitted). This Court has held that assault under MCL 750.81 is a lesser-included offense of assault with intent to do great bodily harm less than murder. See *People v Railer*, 288 Mich App 213, 214 n 1; 792 NW2d 776 (2010).

We hold that, even if the jury should have been instructed on the lesser-included offense of assault under MCL 750.81, the trial court's exclusion of the instruction was harmless error. *People v Gillis*, 474 Mich 105, 140 n 18; 712 NW2d 419 (2006) (“[h]armless error analysis is applicable to instructional errors involving necessarily included lesser offenses”). “In order to overcome the presumption that a preserved nonconstitutional error is harmless, a defendant must persuade the reviewing court that it is more probable than not that the error in question was outcome determinative.” *People v Elston*, 462 Mich 751, 766; 614 NW2d 595 (2000). An error is outcome-determinative if it undermines the “reliability of the verdict.” *Id.* The Michigan Supreme Court has held that “it is only when there is substantial evidence to support the requested instruction that an appellate court should reverse the conviction.” *People v Cornell*,

466 Mich 335, 365; 646 NW2d 127 (2002), overruled in part on other grounds by *People v Mendoza*, 468 Mich 527; 664 NW2d 685 (2003).

In the instant case, defendant cannot overcome the presumption that the court's exclusion of the jury instruction was harmless. Boyles testified that defendant punched and kicked her. Her testimony was corroborated by Powell and Wayne State University Police Officer Jason Tharrett. Powell observed defendant straddling Boyles while Boyles was lying on the ground and attempting to protect her face. Powell had to "take [defendant] off of . . . Boyles" in order to stop the altercation. Boyles, as noted above, testified about significant injuries, and medical records supported the existence of a "left humeral fracture." The evidence clearly showed a situation that went far beyond a simple misdemeanor assault. Under the circumstances, we find no basis for reversal with regard to the omission of the requested instruction.

Defendant also argues that the trial court should have given the jury an instruction on self-defense. MCL 780.972(2) states:

An individual who has not or is not engaged in the commission of a crime at the time he or she uses force other than deadly force may use force other than deadly force against another individual anywhere he or she has the legal right to be with no duty to retreat if he or she honestly and reasonably believes that the use of that force is necessary to defend himself or herself or another individual from the imminent unlawful use of force by another individual.

The trial court did not err by denying defendant's request for a self-defense instruction because a rational view of the evidence did not support a self-defense claim. Defendant never indicated that she was in fear of Boyles, never testified that she acted in self-defense, and never testified that she believed that it was necessary to use force against Boyles. Defendant testified about being "angry," not about needing to defend herself. Because there was no evidence to support a self-defense claim, the trial court did not err by excluding this jury instruction.

Lastly, defendant argues that the trial court abused its discretion by admitting only partial evidence of Boyles's medical records. At trial, the court admitted Boyles's full medical records from Harper Hospital, where she received treatment a few days after the incident, but did not admit medical records from Detroit Receiving Hospital, where she received treatment the day of the incident. We review a preserved evidentiary claim for an abuse of discretion. *People v Danto*, 294 Mich App 596, 598-599; 822 NW2d 600 (2011). The trial court abuses its discretion "when it chooses an outcome that is outside the range of reasonable and principled outcomes." *People v Wacławski*, 286 Mich App 634, 670; 780 NW2d 321 (2009).

MRE 106 provides:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

Defendant argues that fairness required the trial court to admit Boyles's medical records from Detroit Receiving Hospital along with her medical records from Harper Hospital.

This Court has held that MRE 106 was “designed to prevent unfairness which may result if a statement is taken out of context.” *Moody v Pulte Homes, Inc.*, 125 Mich App 739, 747; 337 NW2d 283 (1983), rev’d in part on other grounds 423 Mich 150 (1985). As noted, defendant objected to the admissibility of the Harper Hospital records on the basis that the records were incomplete because the Detroit Receiving Hospital records were not included. However, the prosecution stipulated that it did not have possession of the Detroit Receiving Hospital records, except for Boyles’s discharge papers.¹ The trial court admitted the Harper Hospital records, evidently agreeing with the prosecution that defendant’s objection went mainly to the weight of the evidence, an argument that defense counsel could explore in his closing argument. It was reasonable for the trial court to determine that fairness did not require the inclusion of any further medical records because the entire record from Harper Hospital was produced.²

Moreover, defendant does not articulate how the Detroit Receiving Hospital records would have assisted her defense in any way. In fact, defendant used the missing evidence to her advantage during her closing argument by asking the jury to draw an inference about Boyles’s credibility because she visited two different hospitals and only produced records from one visit. Counsel also emphasized that the Harper Hospital records did not corroborate all of her injuries. Under all the circumstances, we find no basis for reversal.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Deborah A. Servitto

¹ Boyles’s discharge papers from Detroit Receiving Hospital were not admitted at trial.

² The Harper Hospital records corroborated Boyles’s testimony regarding her “left humeral fracture,” but it appears that they were devoid of other injury references.